## NOTES OF CASES.

FALSE PRETENSES.—The pretense by a man that he is unmarried, upon which he procures money from a woman on a promise of marriage, is held, in *State* v. *Renick* (Or.), 44 L. R. A. 266, insufficient to make him punishable for false pretenses through the use of himself as a false token.

WILLS—CREDITOR-LEGATEE.—In *Jones* v. *Shomaker* (Fla.), 26 South. 191, it is held that a creditor who accepts a legacy or devise under his debtor's will, in lieu of his claim, takes it subject to the payment of the other debts of the testator, and occupies no higher ground than any other beneficiary under the will.

ACTIONS FOR PERSONAL INJURIES—ASSIGNABILITY.—A right of action for personal injuries is held, in *North Chicago St. R. Co.* v. *Ackley* (Ill.), 44 L. R. A. 177, to be not assignable, even when the statute has provided for the survival of such an action. In a note to this case there is an analysis of the decisions on the assignability of such causes of action.

INSURANCE—INDEMNITY AGAINST ACTIONS FOR NEGLIGENCE.—A contract to indemnify a common carrier of passengers against losses occurring from injuries to them is held, in *Trenton Pass. R. Co.* v. *Guarantors' Liability Indemnity Co.* (N. J.), 44 L. R. A. 213, to constitute a valid insurance which is not against public policy, although it covers losses resulting from negligence.

GAME LAWS—GAME BROUGHT FROM ANOTHER STATE—INTERSTATE COMMERCE.—The right of a State, in the exercise of its police power, to prohibit the sale or possession of game, during a particular season, is upheld in *Stevens* v. *State* (Md.), 43 Atl. 928, even to the extent of applying the prohibition to game shipped from another State, in original packages. See 3 Va. Law Reg. 540; 4 *Ib.* 59.

PLEADING STATUTE OF PAROL AGREEMENTS—NECESSITY FOR ALLEGATION OF WRITING.—Plaintiff's declaration alleged a contract of guaranty and its breach by the defendant, but ommitted to allege that it was in writing. On demurrer it was *Held*, that this was unnecessary, and the declaration was good. *Wilkinson-Gladdis Co.* v. *Van Riper* (N. J.), 43 Atl. 675.

This is in accordance with the rule of pleading that "with respect to acts valid at common law, but regulated as to the mode of performance by statute, it is sufficient to use such certainty of allegation as was sufficient before the statute. Stephen on Pl. 374; 4 Minor's Inst. (3d ed.) 1225. See *Barnes* v. *Coal Co.* (Tenn.), 47 S. W. 498; *Hillman* v. *Allen* (Mo.), 47 S. W. 509; *Crane* v. *Powell*, 139 N. Y. 379; 12 Harvard Law Rev. 357.

JUDICIAL SALES—SPECIFIC PERFORMANCE—TITLE DEPENDING ON ADVERSE POSSESSION.—In *Gorman* v. *Gorman*, 57 N. Y. Supp. 1069, it is held that a purchaser of real estate at a judicial sale will not be compelled to take the property

where it develops that the title depends solely on the effect of adverse possession, under the statute of limitations, and the fact of such adverse holding rests only in parol testimony. "In the case of a judicial sale," says the court, "where questions may be reasonably raised affecting the title, the courts are more ready to relieve a purchaser than where the contract arises out of a private transaction between the parties; but even in the latter case, 'if resort must be had to parol evidence, if it depends upon questions of fact, then a purchaser should and will not be compelled to perform his contract.'" *Holly* v. *Hirsch*, 135 N. Y. 590 (32 N. E. 709); *Heller* v. *Cohen*, 154 N. Y. 299 (48 N. E. 527); *Moot* v. *Association*, 157 N. Y. 201 (52 N. E. 1).

The general subject of specific performance of contracts for the sale of real estate, where the title rests only on adverse possession, is discussed with a full review of the authorities in 33 Am. Law Review, 357.

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LEGACIES—DEMONSTRATIVE AND SPECIFIC.—Testatrix devised to her daughter all of her real estate and all money belonging to her, on deposit in the daughter's name, with directions that the latter should "out of the moneys belonging to me on deposit in her name, pay to my son the sum of fifteen hundred dollars." At the date of the will, the testatrix had on deposit in her daughter's name $1,800, but at the time of her death considerably less than $1,500. On a bill filed by the son to require the daughter (who was also executrix) to pay the full amount of $1,500 to the son, *Held*, That the legacy to the son was specific and not demonstrative; and hence was adeemed *pro tanto* by withdrawal of the fund from bank by the testatrix in her lifetime. *Crawford* v. *McCarthy* (N. Y.), 54 N. E. 277.

The court holds that a mere gift of, or out of, a particular fund is not demonstrative, but specific. To constitute the legacy a demonstrative one, two elements are essential: (1) A bequest in the nature of a general legacy; and (2) It must point to a fund out of which the payment is to be made. In this case the first of these elements was lacking. The gift was not of "$1,500, to be paid out of the fund in bank," but of "$1,500 out of the deposit." If the gift had been "all moneys on deposit," or "half of the funds on deposit," this would clearly have been specific. So a specified amount of the funds on deposit is likewise specific. The case is a close one, but the decision appears to be sound.

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NEGOTIABLE PAPER—PREMATURE ACTION.—In *Humphreys* v. *Sutcliffe*, 43 Atl. 954, the Supreme Court of Pennsylvania discusses the unsettled question whether an action may be brought against the maker of a promissory note on the day of its maturity, after presentment, demand and protest.

The court concludes that the weight of authority is in favor of the maintenance of the action. Citing: 2 Parsons, Bills & N. 461; *Greeley* v. *Thurston*, 4 Greenl. 479.

On this subject it is said in 2 Daniel, Neg. Instr. 1208: "In case of ordinary contracts to be performed upon a certain day, they are really solvable within that day; and as the promisor has the whole of that day for their performance, suit cannot be commenced until that day has passed. But where the maker of a note, or the drawer or acceptor of a bill, makes it payable on a day certain, his contract is to pay it on demand on any part of that day, if made within reasonable hours. The protest must be made on that day, which presupposes a default already made;